

4
December 23. 1729..

S T A T E

O F

Foram



The INSTANCES produced by SIMON Lord LOVAT, for proving the Custom of Succession in the *Title of Lord Baron* in SCOTLAND, as they are admitted by Mr MACKENZIE, or proved by undisputed Vouchers.

Lord of the I S L E S.

THE Lord of the *Isles* was created a Lord of Parliament, without Mention of Heirs, on the 20th of July 1476; and, about the same time, gets a Charter of his Estate to him, and the Heirs-male of his Body; which failzieing, to his two natural Sons, *nominatim*, and the Heirs-male of their Body; which failzieing, *legitimis & propinquieribus heredibus quibuscunque*.

The Use made of this Instance for the Pursuer, is, That if the simple Grant of a Dignity, without a Limitation of the De-

A

scant,

scient, had carried it to his Heirs whatsoever, he would not have taken the Right of his Estate to his Heir-male; which failzieing, to his *Bastards*.

Lord L O R N.

It appears that *Robert Stuart* was a Lord of Parliament, by the Designation of *Lorn*, in the 1439. *John*, his Successor, died about the 1465, without Issue-male; and though he left three Daughters, the eldest of which was married to the Earl of *Argyle*, his Brother *Walter* succeeded to the Dignity.

The only Objection to this Instance is, That a Writ relating to the exchanging the Title of *Lorn* for that of *Innermeath*, said, by the Pursuer, to be in the Hands of the Duke of *Argyle*, is not produced, which might clear this Instance; but as the Facts are proven otherwise, and owned by the Defender, it is not necessary.

Lord H U M E.

Sir *Alexander Hume* was created Lord *Hume* by King *James III.* 2d August 1473; his Grandson, *Alexander*, was executed for Treason in the 1516; and leaving only one Daughter, who was married to a natural Son of the Earl of *Arran*, his Brother *George* succeeded to the Dignity and Estate.

The Objection to this Instance is, That *Alexander* being forfeited for High Treason, his Brother *George* could not take the Dignity as Heir to him but by a new Grant from the Crown. The Fact is, That *Alexander* was forfeited; but his Brother *George* was restored, and *Alexander's* Forfaulture rescinded, *per modum justitiæ*, by several Acts of Parliament, *cassing the Forfaulture of Alexander, and reintegrating George then Lord Hume*; and the Charter from the Crown,

Crown, of the Estate to *George*, recites, that *Alexander's* Forfaulture was *pro parvis et exiguis criminibus*. This is a plain Decision of King and Parliament in favour of an Heir-male.

Lord *K E I T H*.

The Pursuer admits, that this Instance is not sufficiently vouched, there being no other Instruction of it save the Manuscript History of the Family of *Marischall*, now printed in the Appendix of *Nisbet's* Heraldry.

Lord *C R I C H T O N*.

Robert Crichton of *Sanquhar* was made a Lord of Parliament by King *James III.* the 11th of *January 1487*. In the 1612, *Robert* then Lord *Crichton* of *Sanquhar* died without Issue, and *William Crichton* of *Ryehill*, his Cousin-german, succeeded him, though he had a Sister married to *Grierson* of *Bargattan*.

The Pursuer does admit, that, by a Decreet-arbitral pronounced by King *James VI.* the 2d *May 1613*, it appears, that *Crichton* of *Ryehill* was both Heir male and of Line to *William* Lord *Sanquhar*. But that does not prove that he was Heir of Line to *Robert*, who died without Issue, but only Heir of Line to another Lord of that Family, called *William*. The King indeed, by that Decreet, gives a very extraordinary Determination, in decreeing the Honours to belong to *Alexander Seton* of *Gargunnock*, as Assignee from *Carco*. But as that does not touch the natural Succession, it makes for neither Side. However, this Submission did not take Effect; for the Honours still continued in *Ryehill's* Family, now Earls of *Dumfries*. On the other hand, it is not proved by the Pursuer, that the Lady *Bargattan* was alive when *Ryehill* succeeded.

Lord

Lord *LIVINGSTON*.

Pursuer alledged, That *James* Lord *Livingston* dying without Issue, was not succeeded by his Sister, *Elisabeth* Countess of *Ross*, who survived him, but by Sir *James Livingston*, an Heir-male.

Defender answers, That *James* the Brother of *Elisabeth* was succeeded by another *James* his Nephew, the Son of *Alexander*, a younger Brother; and that this Lord *James*, the Nephew, married for his second Wife *Agnes* the Daughter of Sir *John Houston* of that Ilk; as by Charter of the Lands of *Slo-munan* to *James* Lord *Livingston* and *Agnes Houston*, dated January 1499.

Reply, The former Part of the Answer may be true; but then it was the Nephew, and not the Brother of *Elisabeth* Countess of *Ross*, who was succeeded, not by her, but by Sir *James Livingston*, a remoter Heir-male: For it could not be *James* the Nephew, who was the Husband of *Agnes Houston*, who got the Charter 1499, but Sir *James Livingston*, who had then succeeded to that second *James*, his Pupil. This appears from a Charter of Apprising of the Lands of *Houston*, anno 1491, to Sir *James Livingston*, and *Agnes Houston* his Spouse, Daughter to Sir *John Houston* of that Ilk; and from a Writing in the 1498, where Sir *James Livingston* is designed *Tutori & heredi apparenti Jacobi Domini de Livingston*. It is impossible that *James*, the Son of *Alexander*, could be Tutor to his Father's eldest Brother, joined with that Charter to Sir *James* himself, under the Title of Lord *Livingston*, in January 1499. And that the Countess of *Ross* was then living, appears from a Charter 1503.

Lord *LINDSAY*.

It is admitted, that, in the 1456, the Family of *Lindsay*

say were Lords of Parliament; and that in the 1608, *John Lord Lindsay* dying without Issue-male, tho' he had a Daughter, who was married to *Alexander Falconer*, Son to *Falconer of Halkerton*, yet his Brother *Robert* succeeded in the Honours.

In the 1524, the Estate was settled upon Heirs-male; and the Defender affirms, That before that Time the Investitures of the Estate were to Heirs whatsoever; and that therefore it is probable, that when the Destination of the Estate was altered, the Method of Succession to the Honours was also altered by the King's Consent. But, 1^{mo}, It is not vouched, that before the 1524, the Investitures were to Heirs whatsoever. 2^{do}, The least Appearance of any Resignation of the Honours is not pretended. And, 3^{io}, There were no Resignations in *Scotland* till the Reign of *James VI*.

Lord FLEEMING.

It is admitted, That the Family of *Fleeming* were Lords in the Reign of *James II*. and that *James Lord Fleeming* dying without Issue-male, on the 15th of *December 1558*, though he left one Daughter *Jean*, married to *Sir John Maitland of Thirlestoun*, yet his Brother *John* succeeded to the Dignity and Estate.

The Defender asserts, that before the 1557, the Investitures of the Estate were to Heirs whatsoever; and that there being an Entail of the Estate, in the 1558, to Heirs-male, it is probable the Succession to the Honours was, at that Time, altered by *Queen Mary*. This requires no Answer; only it may be observed, That the Lady *Thirlestoun*, who was excluded, was Grandchild to the Duke of *Chatrault*, and *Queen Mary's* near Relation.

B.

Lord

Lord HAY of Yester.

It is agreed, that *John Hay* of *Yester* was created a Lord of Parliament the 11th of *January* 1487, and that *William* Lord *Hay* of *Yester*, who died without Issue-male in the 1591, left behind him several Daughters, particularly one married to *Alexander Horfeburgh* of that Ilk; yet was succeeded in Dignity and Estate by *James Hay* his Brother.

Mr *Mackenzie's* Objection to this Instance is, That in the 1590, Lord *William* resigned his whole Estate in favour of himself, and his Heirs-male; that this *William* died the 16th of *March* 1591, without being infest on this Charter of Resignation; and that by a new Charter, the 29th of *May* thereafter, the King not only gives *James* the Estate, but likewise the Honours; that therefore he enjoyed these Honours in virtue of this Grant from the Crown, and not as Heir to his Brother. But, 1mo, There is no Resignation of the Honours in the Charter 1590; and therefore the King could not give them of new, since, according to Mr *Mackenzie's* Argument, they must have been in the Right of Lady *Horfeburgh*. 2do, They are not of new granted, but confirmed. And as to *James's* not taking the Title until the Charter 1591, that does not appear; nor can it be of any Consequence, since it is but two Months after the Death of his Brother *William*.

Lord ROSS.

That the Family of *Ross* were Lords of Parliament in the 1502 is agreed on by both Sides; and it is admitted, that *Ninian* Lord *Ross* had two Sons, *Robert*, who left only one Daughter, *Jean*, afterwards Lady *Fleming*, and *James*, who succeeded his Brother, in exclusion of the said *Jean*.

The

The Defender says, That since *Ninian* Lord *Ross*, in the 1548, altered the Destination of his Estate to Heirs-male, which it is pretended was, before that Time, to Heirs whatsoever, that it is probable he got his Honours at that Time settled to the same Line of Heirs. This deserves no Answer; only it is not vouched, that the Investitures of the Estate before the 1548 were to Heirs whatsoever.

Lord R O S S. L

James Lord *Ross* died in the 1630; and left behind him three Sons, who were all successive Lords *Ross*; and two Daughters, *Jean*, married to *Hepburn* of *Wauchton*, and *Mary* to Sir *Henry Innes*: yet, after the Death of the three Sons, Sir *William Ross* of *Muristoun*, their Grand-uncle, succeeded to the Dignity, in exclusion of the two Daughters.

Mr *Mackenzie* obtrudes to this the Settlement of the Estate above mentioned by Lord *Ninian*.

Lord B O Y D.

It is admitted, that, in the 1548, *Robert Boyd* was a Lord of Parliament; and that, in the 1641, another *Robert*, then Lord *Boyd*, dying without Issue, though he left five Sisters, one married to *Arniston*, another to *Prestongrange*, &c.; yet, in exclusion of them, was succeeded by *James* Lord *Boyd*, his Uncle.

The Answer made to this is, That it seems the eldest Sister had not a mind to take the Title: Which deserves no Notice.

Lord E L P H I N G S T O N.

The Family of *Elphinston* came to be Lord Barons in the 1511. In the 1649, *Alexander* Lord *Elphinston* died, leaving

ving only one Daughter *Lilias*, and was succeeded in his Honours by *James Elphingston* his Nephew, who married *Lilias*. Upon his Death, first his eldest Son *Alexander*, and thereafter his second Son *John*, succeeded in the Honours, and took the Title of Lords *Elphingston* upon them, during the Life of their Mother *Lilias*.

To answer this, Mr *Mackenzie* says, He supposes there has been a Resignation. Such Answers are ridiculous.

Lord *GRAV*.

The Family of *Gray* were nobilitate in the 1452. In the 1541, *Patrick* Lord *Gray* dying without Issue-male, though he left several Daughters, particularly one married to *Patrick Ogilvie* of *Inchmartin*; yet his Nephew, by his Brother *Patrick Gray* of *Buttergask*, succeeded to his Honours and Estate, in exclusion of the Lady *Inchmartin*.

From the above State, it is plain, even by the Admissions of the Defender, that the Instances of *Lorn*, *Hume*, *Lindsay*, *Fleming*, *Yester*, the two taken from the Family of *Ross*, *Boyd*, *Elphingston*, and *Gray*, are precisely in Point; and, from the Vouchers mentioned concerning the Family of *Livingston*, the most the Defender can plead is, that it is doubtful.

As to the Lord of the *Isles*, *Keith*, and *Crichton*, it must be owned, no conclusive Argument can be drawn for either Side; but unquestionably they tend very much to support the Lord *Loval*'s Allegations.

The

The Pursuer shall next fairly state the Instances produced by Mr Mackenzie, in the Dignity of Lord Baron, as they are pretended to be proved by Vouchers, or admitted by my Lord Lovat.

Lord BOTHWELL.

It is admitted, that *Thomas de Moravia*, called *Dominus de Bothwell*, left only one Daughter, *Jean*, married to Sir *Archibald Douglas* of *Galloway*, afterwards Earl of *Douglas*; and that the Earls of *Douglas* took the Title of *Bothwell*, as a subaltern Title, or as Proprietors of that Barony, as they likewise took *Drumshargart* and *Aberdour*.

The Objection made by the Pursuer to this is, That Sir *Thomas Murray* died in the Year 1366, long before the Title of *Lord Baron* was known in *Scotland*; and that neither his Daughter, nor *Archibald Douglas* of *Galloway* her Husband, ever took the Title of *Bothwell*, till after he was Earl of *Douglas*.

Lord BRICHEN.

It is admitted, that *Margaret*, the Sister of *David de Brichen*, was married to *David de Barclay*; but it is denied, that he, in right thereof, was a Lord. It is also admitted, that *Margaret*, the Daughter of Sir *David Barclay*, and his Heir, was married to the *Earl of Athole*, and that the Estate came thereby to the Earl, and was forfeited. It is admitted, that *Thomas Maule* of *Panmure* laid Claim to the Estate; but it is denied he ever claimed the Honours, or that there ever were any in that Family.

There is no Voucher produced by Mr *Mackenzie*, to make it appear, that ever this Family were in the Rank of

Lord Barons, save a Reference to the Peerage of *Scotland*. All that the Author intended, by placing some of the great Families there, was to show the Lustre such Families made, even before we had Lords of Parliament, as a distinct Order of Nobility from other Barons.

Lord *CARLYLE*.

It is admitted, that Sir *John Carlyle* was made a Lord of Parliament by King *James III.* in the 1473: That *Michael* Lord *Carlyle* had two Sons; *William*, who died without Issue-male, leaving one Daughter, *Elisabeth*, and *Michael*, to whom he disposed his Estate after the Death of *William*: That *Elisabeth* was married to *James Douglas*, Nephew to the Earl of *Morton*, in 1575, the Year Lord *Michael* died; and that she, in some private Charters granted by herself, takes the Title of *Lady Carlyle*. On the other Hand, through the Course of the Dispute betwixt *Elisabeth* and her Cousin-german, the Heir-male, concerning the Succession in the Estate to Lord *Michael*, she is only called *Elisabeth Carlyle*. 2do, Though in private Charters she calls herself *Lady Carlyle*; yet the King, in his Charters to her, designs her only *Elisabetha Carlyle Domine de eadem, nepiti & heredi quondam Michaelis Domini Carlyle*. So that her calling herself *Lady Carlyle*, is only as Proprietar of the Estate. 3tio, That, after her Husband's Creation to be Lord *Torthorold*, even during her second Marriage, she always calls herself *Lady Torthorold*; which she would not have done, if she had a Right to the Peerage of *Carlyle*, seeing it was an older Dignity. And it is very odd to think, that if *James Douglas* or his Family had had a Right to the Peerage of *Carlyle*, he would have ever desired to be created Lord *Torthorold*. It is to be observed, that the Successors of the Lady never used the Title of *Carlyle*, but of *Torthorold*. As to the Decreet of Ranking mentioned by the Defender, as settling the Precedency of the Peerages of *Scotland*,

Scotland, where it is pretended, *James Douglas* was called as Lord *Carlyle*, in the Right of his Wife; it is plain, that the Lord *Carlyle* there called, could not be *Elisabeth's* Husband; since in a Charter the 6th of *September 1606*, six Months after the pretended Decreet, he signs simply, *James Douglas*. 2do, Although Sir *George Mackenzie* mentions such a Decreet in his Heraldry, yet it is not to be found upon Record.

D I N G W A L L.

It is admitted, that the Duke of *Ormond*, in right of his Grandmother Lady *Elisabeth Preston*, was Lord *Dingwall*; but the Patent to Sir *Richard Preston* of *Haltree*, dated in *June 1609*, gives the Title of *Dingwall* to him, his Heirs, or Assignees; therefore has nothing to do in this Case.

G A L L O W A Y.

It is admitted, that *Rolland* of *Galloway* married *Helena*, Sister to *William Morvil* Constable of *Scotland*; and that, after the Extinction of the Family of *Morvil*, by the Death of the said *William*, in the 1196, the Office of Constabulary was enjoyed by the Descendents of *Rolland* of *Galloway*, but not in an hereditary Way. And for their being Lords, it is absolutely impossible; since the Family was extinct some Centuries before we had so much as the Name of a Parliament in *Scotland*.

G O R D O N.

It is agreed on, that Sir *Adam Gordon's* Daughter, *Elisabeth*, was married, in the 1408, to *Alexander Seton*, who thereby came to have Right to the Estate. But it is denied by the Pursuer, that the Family of *Gordon* were Lords of Parli-
ment

ment at that Time. 1^{mo}, Because it is before the Return of King *James I.* to *Scotland*, after which Time we begun first to have Lord Barons. And, 2^{do}, By a Charter, the 20th of July 1408, to *Alexander Seton*, *Elisabeth* is designed in this Manner, *Elisabethæ sponse Alexandri, filie & heredi quondam Adami Gordon militis*: And all the Proof the Defender has is, that *Elisabeth* is called *Domina de eodem*, or *Lady of that Ilk*.

H A L L I B U R T O N.

It is agreed, that *Janet*, eldest Daughter to *Patrick* Lord *Halliburton*, was married to *William* Master of *Ruthven*, and that *Patrick* died without Issue-male: But it is denied that Lady ever was a Peerefs. On the contrary, during the Time her Husband was Master of *Ruthven*, in a Charter 16th March 1519, she is designed *senior filia, & una heredum quondam Patricii Domini Halliburton*. And the Defender has produced no Voucher to shew, that that Lady, or any of her Descendents, took the Title of Lord *Dirleton*, until the Erection of the Earldom of *Gowry*, in the Time of her Grandson, as a subaltern Title. It is owned, that in the Narrative of the Charter, they are called Lord *Ruthven* and *Dirleton*, as Proprietar of the Land. But the Title of *Halliburton*, and not *Dirleton*, is the Title of this Dignity.

H A R R I S.

It is admitted by both sides, that the Family of *Harris* were Lords of Parliament in the 1591; and the Defender affirms, even in the 1478: But this is questioned by the Pursuer; because, until the 1491, they go only under the Designation of *Taregles*. It is admitted, that *William* Lord *Harris* died without Issue-male in the 1543, and that his eldest Daughter was married to Sir *John Maxwell*, second Son to the Lord *Maxwell*;

as

as also, that the said Sir *John* was Lord *Harris* in the 1567. But, on the other hand, from the 1543, to the 1567, it is clearly vouched and admitted by the Defender, that neither he or his Lady took the Title of *Harris*: For by authentic writs in the 1553, 1556, 1559, and 1566, all produced, he goes under the Designation of *John Maxwell* and Sir *John Maxwell*; and his Lady only called his Wife: But, in the 1566, by a Charter under the Great Seal, his Lands is erected to a *Dominium*, and soon thereafter he is designed by the Title of Lord *Harris*; which must have been by a Creation of Sir *John* himself. It may be true, that *Archibald Harris* of *Maidenpaap* was Heir-male to Lord *William*; but it is not proven, that he was descended of *Herbert* the first Lord; and that Dignity subsisted but 52 Years by the Lord *Lovat*'s Accounts, and only 65 by Mr *Mackenzie*'s.

O L I P H A N T.

As to the Decision of *Oliphant*, marked by *Durie*, wherein the Lords give their Opinion in favour of the Heir of Line, *1mo*, That Process is not to be found on Record; and if the Grounds whereon it proceeded were seen, they might give the Reason of the Decision. *2do*, The Point disputed, as appears by the Decision, as it is marked, was the Effect of a Resignation, whereon nothing had followed. *3tio*, The Heir-male enjoys the Dignity until this Day, *without any de novo damus, or Deed of the King*.

S A L T O N.

It is admitted, that upon the Death of *Alexander* Lord *Abernethy* of *Salton*, without Issue, *Alexander Fraser* of *Phillorth*, his Cousin-german by his Aunt, served himself Heir of Line to *George* Lord *Salton* his Grandfather; and that after King *Charles II.*'s approving his taking and using the Title of *Salton*,
D he

he did use it: But it is to be observed, that he is only designed *Alexander Frazer* of *Phillorth* in the Service; and therefore only, in consequence of the King's Letters patents, took that Dignity, otherwise such Letters patents were not necessary; yea, he thought proper to procure an Act of Parliament confirming his Title. It is not vouched, that *Abernethy* of *Mayen* is Heir-male of the Family.

Lord *NITHSDALE*.

As for this Instance, there is no Voucher of it, save Mr *Hay*'s Deposition; and it is Fact, that they never were Lords of Parliament, as appears both from their Designations, and that they were before Lords of Parliament, being extinct in the 1391.

Lord *SEMPLE*.

As to this Instance, it is but of Yesterday, still controverted by the Heir-male, who likewise takes the Title. 2^{do}, The Pursuer is informed there was a Resignation; but of this there is no Voucher.

Lord *BURLEIGH*.

It is admitted, that, in the 1612, Sir *Michael Balfour* was a Lord of Parliament, and that *Robert Arnot*, who was married to his only Daughter *Margaret*, succeeded him; but that behoved to be by the Descent's being fixed by Patent, since *Robert Arnot*, the Lady's Husband, took it on his Father in Law's Death, and his Son *John* succeeded only to the Titles, after the Decease of his Father, about the 1650, though his Mother, the Lord *Burleigh*'s Daughter, died in the 1638, at which Time *John* would have taken up the Title, if the Dignity had flown from his Mother.

SIN-

S I N C L A I R.

As for this Instance, which was in the Defender's written Condescendence, but left out in the printed one, it is enough to notice, that, upon the Failure of Heirs-male in that Family, by the Death of *John Lord Sinclair*, in the 1676, the King gives a new Patent to his Grandson by the Daughter, on the Supposition, that the Dignity was extinct, on the Failure of Heirs-male.

From the above State of the Instances of Lord Barons of *Scotland*, produced by the Defender, it is plain, that the Families, *Bothwell, Brechin, Galloway, Gordon, and Nithsdale*, were not then Lords, but only Lairds, and an hundred such Instances as these might be produced by the Pursuer; that the *Title of Carlyle* was never used since the Death of *Lord Michael*; nor *Halyburton*, since the Death of *Lord Patrick*; that *Dingwall, Harris, Sinclair, Salton, and Burleigh*, are by special Patent; *Oliphant* out of the present Question, and *Semple* still controverted.

Short

Short State of the Argument, from the Investitures
of the Lordship or Estate of the Family of LOVAT.

IT is argued for *Simon Lord Lovat*, that the Nature and Descent of his Title, such as it was intended by the Crown, in the original Grant, and taken and understood to be given or provided by all his Ancestors, who have been Lords *Lovat*, appears from the Settlements and Investitures of the Lordship and Estate of *Lovat*, from the most ancient Charter thereof, now extant, which was in the Year 1539, and contains the Union of several other Lands with the Lordship and Barony of *Lovat*, and provides the whole to descend to Heirs-male whatsoever, bearing the Arms and Sirname of *Frazer*; and from all the succeeding Investitures, which are in the same Manner taken to Heirs-male, some of them expressing the Cause, *viz.* That the Heirs-male were to be Lords of the *Lovat*; and thus it continued without any Interruption, till the Deeds of the two late Lords *Lovat*, the Father and Grandfather of the Defender's Mother, which yet by each of themselves were soon altered, and the Estate brought back to the ancient male Destination.

Obj. I. The Defender answers, first, *That by a numerous List of Charters, older than the 1539, it appears, that several Lands or Estates belonging to, or acquired by the Lords Lovat, were taken either in general to Heirs, or to Heirs whatsoever; and that, even after the 1539, several valuable Parcels of the Estate had at different Times been taken to Heirs whatsoever.*

Reply. The Pursuer replies, That the latter Part of the Objection destroys the whole: For it is well to be observed, that of all those Charters produced for the Defender, pre-
ceeding

ceeding the 1539, there is not a single one of the Lordship and Barony of *Lovat* itself. And though other smaller Parcels of Land were then sometimes taken to Heirs whatsoever, in order to serve the Uses of the Family in the Settlement of younger Sons, or of second Marriages, or the like, that is no more inconsistent with a Settlement of the Lordship of *Lovat* to Heirs-male before the 1539, than the like Provisions of some lesser Estates to Heirs whatsoever, which the Defender, in his Answer, says, are often found since the 1539; when, at the same Time, he admits, that the Lordship and Estate of *Lovat* stood all the while invariably provided to Heirs-male.

Object. II. *That from the several personal Deeds or Contracts produced for the Defender, of a Date older than the 1539, it appears, that the Lords of Lovat, Makers of those Contracts, believed or understood they were to be succeeded by Heirs whatsoever. These are,*

First, In the Year 1416, a Contract betwixt *William* of *Fenton*, Lord of that Ilk, and *Hugh Frazer* Lord of the *Lovat*, who call themselves two noble Lords and mighty, wherein it was agreed, that *Lovat* should take to Wife *Janet*, the Sister to the Lord of *Fenton*, who, in the Consideration of the Marriage, makes over several Lands to *Lovat* and *Janet* in conjunct Fee, and to the Heirs of the Marriage; and *Lovat* on his Part becomes obliged to give to the said *Janet*, in name of Dowry, L. 20 out of his Lands of *Golsfoord*.

Secondly, In the 1422, there appears a Contract betwixt *Thomas Dunbar*, Earl of *Moray*, therein designed a noble Lord and a mighty, and a noble Man, *Hugh Frazer* Lord of the *Lovat*, wherein *Lovat* agrees, that his Son shall marry a Daughter of the Earl; who, on the other Part, makes over to *Lovat* and his Heirs the Lands of *Abertarf*, and the Ward and Relief of *William* of *Fenton*, Lord of the *Baiky*, and of *Alexander Chisholm* Lord of *Kinrossy*; and *Lovat* becomes farther obliged,

E

that

that failing his Son, but that he have a Daughter Heir, or Daughters Heirs, he shall give them in Marriage to the Earl's Son or Sons; and failing both the Sons or Daughters of the Lord of the *Lovat*, he obliges his Heirs, whosoever they be, to hold and fulfil that Treaty.

Thirdly, The third Contract is in the 1472, betwixt *Hugh Lord Lovat* and the Burgh of *Nairn*, wherein *Lovat* engages himself to be their Protector, and they become obliged to be faithful to him and his Heirs and Successors.

Reply. The Reply to the Objections from these Contracts will be obvious from the Recital of them; for the first, in the 1416, provides only the Lands which came with the Lady to the Heirs-general of the Marriage; and out of *Lovat's* proper Estate there is only provided a Dowry of Twenty Pound to her. In the second, *anno* 1422, *Lovat* making a considerable Alliance for his Son, and getting the Lands of *Abertarf*, a valuable Estate, with the Earl *Moray's* Daughter, promises to give his Daughter's Heir or Heirs to the Earl's Son or Sons; but it noways follows from thence, that these Daughters were to be the Heirs of his whole Estate; whoever should be his Successor in the Estate of *Lovat*, his Daughters, no doubt, might be his Heirs of Line, and take as such, any of his Lands which then stood provided to Heirs whatsoever.

But farther, at this Time it does not appear that *Lovat* was truly a Lord of Parliament; for, in this very Contract, the Earl of *Moray* is designed *a noble Lord and a mighty*; and the Lord of the *Lovat*, by way of Contradistinction, is called *a noble Man*; and in the same Contract, *William* of *Fenton* is called *Lord of the Baiky*, and *Alexander Chisholm*, *Lord of Kinrossy*; yet it is not pretended that either of those were ever Peers, though they are here designed Lords of their Estates, which, at that Time, was an Appellation common to all the considerable Barons, as by numberless Instances might be shown. But after this, in the 1431, it appears, that in a
Charter

Charter from the Crown of the Lands of *Kinnel, Lovat* is designed simply *Hugo Fraſer de Lovat* ; as alſo in a Confirmation granted the ſame Year, of the Contract above mentioned betwixt him and *Fenton*, in the 1416. And as for the Burgh of *Nairn* engaging to be faithful to the Lord *Lovat*, and his Heirs and Succeſſors, in the 1472 ; when this is brought as an Argument for the Defender, that the Town of *Nairn* did not expreſs who were to be thoſe Succeſſors, it does not deſerve a ſerious Reply.

Obj. III. *That, by two ſpecial Retours, the one in the 1501, and the other in the 1524, wherein Thomas and Hugh Lords Lovat appear to have been ſeverally ſerved and retoured as neareſt and lawful Heir to their reſpective Fathers in the Caſtle and Lands of Lovat, with their Pertinents.*

Reply. A Service and Retour of a Son to his Father, in theſe general or indefinite Terms, is no way inconſiſtent, either with a preceding Settlement to Heirs-male, or with an after Succeſſion or Service of a collateral Heir-male, who comes to be diſtinct from the Heir of Line ; as was ſolemnly determined in a Caſe very parallel to the preſent, the 13th November 1712, the Earl of *Dalhousie* againſt the Lord and Lady *Hawley* ; where the Lords of Seſſion found, That *William* Earl of *Dalhousie*, Father to the Lady *Hawley*, the Defender, being eldeſt Son, and ſo both Heir male and of Line to Earl *George* his Father, and ſerved *legitimus & propinquior heres* to him in Lands wherein Earl *George* was infeſt, to himſelf and his Heirs-male, ought to be underſtood as ſerved in the Terms of Earl *George*'s Infeſtment ; and therefore repelled the Objection made by the Lady *Hawley* againſt the Earl of *Dalhousie*, the Purſuer, who was a collateral Heir-male.

Obj. IV. *That, in the Year 1666, Hugh Lord Lovat having then no Iſſue-male, ſettled his Eſtate upon Anna his Daughter, but redeemable by himſelf, or the Heirs-male of his Body ; and that Hugh late Lord Lovat, in purſuance of his*

his Marriage-articles with the Lady Emilia Murray, did in the Year 1694, take a Charter of the Estate, upon the Resignation of certain Apprisers in Trust for him, to himself and his Heir whatsoever.

Reply. That no Settlement so late as the 1666 or 1694 can be of any Use in the present Question; because then the Custom had been long established, of granting Dignities by honorary Patents from the Crown; and the Connection betwixt the Descent of the Estate erected into a Lordship, and the Peerage itself, was no longer known, as it had been formerly. Neither could any Deed of these late Lords alter the Succession to the Honours, which, before such Deed of theirs, stood provided to Heirs-male, in virtue of the old Grants from the Crown. At the same time, it is observable, that as these two late Lords were the only Lords *Lovat* who ever made any Deed in favour of Heirs whatsoever, as to the Lordship or Barony of *Lovat* itself; so they each of them defeated his own Act: For the provisional Settlement made by the first upon his Daughter, became ineffectual by the Existence of a Son; and the other, by the last Lord *Hugh*, was by himself solemnly revoked and altered, in the Year 1696, by a Disposition of his Estate in favour of his Heir-male, the Pursuer's Father, upon the Recital, That he had been imposed upon when he was prevailed with to grant the former, in the 1694, to Heirs whatsoever, so contrary to the ancient Settlements of his Family, of which at that Time he had been ignorant.

It appears therefore, that this Lordship of *Lovat* has, from the earliest Times, constantly been understood and believed to have been granted to the Heirs-male of the first Lord: And from thence it cannot be doubted, that this Lordship was in reality so granted by the Crown; and consequently, that the Pursuer, the undoubted Heir-male, is the only Person now intitled to the Dignity.



